

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

<b>WENDELL L. BROWN, ET AL.</b>	§	
Plaintiffs,	§	
	§	
	§	Civil Action No. 1:04CV862LG-RHW
<b>v.</b>	§	
	§	
<b>CITY OF GULFPORT, ET AL.</b>	§	
Defendants,	§	
	§	

**MEMORANDUM OPINION AND ORDER DENYING  
DEFENDANTS' MOTION TO DISMISS**

THIS MATTER COMES BEFORE THE COURT on the Motion to Dismiss filed by the City of Gulfport on June 8, 2005. Plaintiffs tendered a timely response. After consideration of the Motion, the pleadings on file, and the relevant legal authority, the Court finds that the Motion should be denied for the reasons that follow.

Plaintiffs are proceeding *pro se* and filed a Bill of Exceptions and Petition for Writ of Mandamus in the state court. Both cases were removed to this Court and thereafter consolidated. The record reflects that subsequent to the Court's order entered on April 13, 2005, summons was issued on May 2, 2005. The summons named Ken Combs, in his official capacity and the City of Gulfport. Plaintiffs delivered a copy of the summons and their petition to City Clerk Amelia Bordeaux on or about May 5, 2005.

The City once more moves for dismissal pursuant to FED. R. CIV. P. 4, 12 and 56 taking issue with the manner of service: "Plaintiffs attempt at serving process on the City was improper, untimely, and defective. As such, the Court lacks personal jurisdiction over the City." ¶ 5 of City's Motion to Dismiss, filed in cause number 1:04cv862. The Court finds this

argument disingenuous. Plaintiffs properly and timely served the municipal clerk with summons and a copy of their petition which, upon a cursory reading, mirrors a civil complaint, even though the pleading is not styled a “complaint.”

Finally, the Court is compelled to note that the City requests that “this Honorable Court abstain from involving itself in the present proceeding, or the proper forum to entertain the purported issues asserted by Plaintiffs herein is the State Court.” *See ¶ VI. of City’s Motion to Dismiss, filed in cause number 1:04cv862.* Perhaps the City should have considered this argument prior to filing a Notice of Removal with this Court.

In accord with the above findings, the Court finds that the instant Motion should be denied.

**IT IS THEREFORE ORDERED AND ADJUDGED**, that the Motion to Dismiss filed June 8, 2005, [28] should be, and is hereby **DENIED**.

**SO ORDERED AND ADJUDGED** this the 29<sup>th</sup> day of March, 2006.

s/ Louis Guirola, Jr.  
LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE